

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL RHINE,

Plaintiff,

v.

PETE BUTTIGIEG,

Defendant.

CASE NO. 2:20-cv-01761-RAJ-BAT

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PROTECTIVE
ORDER AND DENYING
DEFENDANT'S CROSS MOTION
FOR PROTECTIVE ORDER**

Before the Court are Defendant Pete Buttigieg's Motion for Protective Order (Dkt. 15) and Plaintiff Daniel Rhine's Cross Motion for Protective Order (Dkt. 18). In this discrimination action, Plaintiff alleges that his former employer, the Federal Aviation Administration (FAA), unlawfully discriminated and retaliated against him when the agency removed him from federal employment in 2019. Dkt. 1. Defendant has denied those claims, and discovery has commenced. In his discovery requests, Plaintiff seeks extensive information and documents about other FAA employees:

INTERROGATORY NO. 1: Identify all individuals who have made complaints to the Accountability Board, EEO, or management through any other formal or informal means of discrimination, harassment, a hostile work environment, or retaliation made to, against, or involving Thomas Poole, Rich van Allman, Clark Desing, Scott Matson, Kirsten Kenny, Gina Perez (formerly Storlie), and Kristine Dillon. Provide each individual's gender, race, history of any protected disclosures (e.g. Accountability Board, EEO, or similar), the allegations of their complaint involving each named individual in detail, all attachments and investigative material, the reporting parties' personal contact information (phone number, email address, and address), and describe any action taken by the

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1 Defendant or its employees in response to each complaint. Complaints include
 2 verbal complaints, written complaints, lawsuits, agency filings, and any other
 3 means by which employees have complained about employment discrimination,
 harassment, hostile work environment, and retaliation.

4 REQUEST FOR PRODUCTION NO. 8: Please produce a complete copy of all
 5 personnel files and performance reviews from Fiscal Year 2015 to the present,
 including any discipline issued and the dates each performance review was
 entered with electronic certification, for the following [21] individuals.

6 Dkt. 16, Declaration of James Strong, Ex. B.

7 Defendant acknowledges that other employees' work histories may be discoverable in
 8 employment discrimination cases and that the Privacy Act does not protect such items from
 9 being discoverable. However, Defendant is concerned about how these documents, once
 10 produced, will be handled during this litigation and after it is over. Plaintiff argues that the
 11 documents sought are "routine use documents [that] are excepted for production under the
 12 Privacy Act, and are therefore, not appropriate for any Stipulated Protective Order."

13 Because Defendant acknowledges that the documents are discoverable, the issue here is
 14 whether there is good cause to fashion an appropriate protective order to shield the otherwise
 15 discoverable items from public disclosure. *See, e.g., Irish v. Whitman Cnty.*, Case No. 05-134-
 16 LRS, 2005 WL 8158786, at *2 (E.D. Wash. Dec. 9, 2005). Defendant seeks an order to protect
 17 personnel records, reports of protected activity of other FAA employees, or other documents
 18 subject to the Privacy Act, from further use or dissemination outside this litigation. Many courts
 19 recognize that "personnel files often contain sensitive personal information, ... and it is not
 20 unreasonable to be cautious about ordering their entire contents disclosed willy-nilly." *Regan-*
 21 *Touhy v. Walgreen Co.*, 526 F.3d 641, 648 (10th Cir. 2008); *Lauer v. Longevity Medical Clinic*
 22 *PLLC*, 2014 WL 5471983, at *7 (W.D. Wash. Oct. 29 2014) (recognizing the "sensitive
 23 contents" of personnel files but expressing confidence that the "parties' Protective Order will be

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1 sufficient to shield these employees from any public disclosure”). Similarly, reports of protected
2 activity can possibly result in “substantial harm, embarrassment, inconvenience, or unfairness” to
3 employees named therein. *Delaittre v. Berryhill*, 2017 WL 6310483, at *7 (W.D. Wash. Dec. 11,
4 2017). Thus, the Court finds that good cause exists to protect these records.

5 Plaintiff also argues that Defendant must identify with specificity what documents must
6 be protected. Dkt. 18, p. 8. According to 5 U.S.C. § 552a(a)(4), the “term ‘record’ means any
7 item, collection, or grouping of information about an individual that is maintained by an agency,
8 including, but not limited to, his education, financial transactions, medical history, and criminal
9 or employment history and that contains his name, or the identifying number, symbol, or other
10 identifying particular assigned to the individual, such as a finger or voice print or a photograph.”
11 5 U.S.C. § 552a(a)(4). In addition, the Court has authority to issue a protective order on a less
12 than document-by-document basis if the moving party (1) “make[s] some threshold showing of
13 good cause to believe that discovery will involve confidential or protected information,” which
14 “may be done on a generalized as opposed to document-by-document basis;” (2) “agree[s] to
15 only invoke the designation in good faith;” and (3) provides that the receiving party has “the
16 right to challenge the confidentiality designations assigned to documents.” *Henry v. Ocwen Loan*
17 *Servicing, LLC*, Case No. 17-688-JM-NLS, 2018 WL 1638255, at *2 (S.D. Cal. Apr. 5, 2018)
18 (quoting *Van v. Wal-Mart Stores, Inc.*, Case No. 08-5296-PSG, 2011 WL 62499, at *2 (N.D.
19 Cal. Jan. 7, 2011) and *Parkway Gallery Furniture, Inc. v. Kittinger/Penn. House Grp., Inc.*, 121
20 F.R.D. 264, 268 (M.D.N.C. 1988)). The protective order proposed by Plaintiff involves
21 confidential information, provides that the parties shall invoke the designation in good faith, and
22 provides that the receiving party has the right to challenge the confidentiality designation
23 assigned to documents.

1 Accordingly, the Court **grants** Defendant's Motion for Protective Order (Dkt. 15) and
2 **denies** Plaintiff's Motion for Protective Order (Dkt. 18) as moot. It is further **ORDERED** that
3 the Protective Order proposed by Defendant (Dkt. 15-1) will be signed and entered by the Court
4 separately.

5 DATED this 9th day of September, 2022.

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8 BRIAN A. TSUCHIDA
9 United States Magistrate Judge
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